Supreme Court, U.S.
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No. 99-160

In the Supreme Court of the United States

AMERICAN STORES COMPANY AND SUBSIDIARIES,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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4 pp

QUESTION PRESENTED

Whether contributions to multiemployer defined benefit pension plans made by petitioner after the close of its 1988 tax year were deductible in that year under Section 404(a)(6) of the Internal Revenue Code, 26 U.S.C. 404(a)(6).

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This case presents the same question concerning the proper interpretation of Section 404(a)(6) of the Internal Revenue Code , 26 U.S.C. 404(a)(6), that was presented in *Lucky Stores, Inc.* v. *Commissioner*, 153 F.3d 964 (9th Cir. 1998), cert. denied, 119 S. Ct. 1755 (1999), and *Airborne Freight Corp.* v. *United States*, 153 F.3d 967 (9th Cir. 1998), cert. denied, 119 S. Ct. 1755 (1999). The facts and issues addressed in the present case are identical in all material respects to those presented in *Lucky Stores* and in *Airborne Freight.* The petition in this case was prepared and submitted by the same attorney who represented *Lucky Stores*, and it advances the same arguments made in that case.

For the reasons set forth in our brief in opposition in *Lucky Stores* and our brief in opposition in *Airborne Freight*, the decision of the court of appeals in the present case is correct and does not conflict with any decision of this Court or any other court of appeals.* Further review is therefore not warranted.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

SETH P. WAXMAN
Solicitor General

AUGUST 1999

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* We are providing herewith to petitioner a copy of our briefs in opposition to the petition for a writ of certiorari in *Lucky Stores, Inc.* v. *Commissioner*, No. 98-1279, and in *Airborne Freight Corp.* v. *United States*, No. 98-1287.